

MINUTES
OIL AND GAS TECHNICAL ADVISORY BOARD MEETING
September 2, 2015

TAB MEMBERS PRESENT

Bryan McConnell, Robert Hendricks, Casey Saunders, Fred Baldassare, David Yoxtheimer.
Non-voting advisors present: Emily Krafjack (via webinar), John Walliser, W. Michael Griffin, Barbara Kutchko.

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Deputy Secretary Scott Perry, Kurt Klapkowski, Kim Childe, Elizabeth Nolan, Joseph Adams, Joseph Kelly, Seth Pelepko, Myron Suchodolski, Susan Ghoweri, Ann Mathew, Todd Wallace, Jessica Shirley and Jennifer Zarefoss.

CALL TO ORDER

A regular meeting of the Oil and Gas Technical Advisory Board (TAB) was held in Room 105 of the Rachel Carson State Office Building, Harrisburg, Pennsylvania on September 2, 2015. Deputy Secretary Scott Perry called the meeting to order at 10:00 AM.

Motion: to approve April 23 minutes; by Baldassare, seconded by Yoxtheimer. Changing the minutes to reflect Baldassare motioned and Yoxtheimer seconded the bylaws vote at the April 23, 2015 TAB meeting was addressed. The correction was made to the minutes and voting members unanimously approved. Motion carried.

Motion: to approve March 20 minutes; by Hendricks, seconded by Baldassare, with voting members unanimously approving. Motion carried.

Motion: to approve Bylaws regarding Article IV revision designation of alternates and four-year term limits; by Saunders, seconded by Baldassare, with voting members unanimously approving. Motion carried.

SUMMARY OF DRAFT FINAL RULEMAKING AMENDING CHAPTER 78a

Klapkowski stated there were two major deletions to the draft final rulemaking: noise mitigation from section 78a.41 and centralized tank storage regulation in sections 78.57a and 78a.57a. A significant number of comments were received on both of these topics. It was decided to remove noise mitigation from the rulemaking since the Advanced Notice of Final Rulemaking comments made clear the complexity of the topic. The Department is handling this issue as a public nuisance under the Administrative Code to ensure consistency across different Department programs. A technical work group will need to be created. Comments were negative on all sides for offsite waste management in storage tanks. The Waste Management program under Subchapter C, Article IX will address all off-site storage of waste products, on-site management will stay in Chapter 78.

“Common area of a school’s property” was added to screening impacts to public resources. The term includes recreational sections of an educational property, but used by the general public. Discussion regarding the definition of “educational facility” ensued. The term “containment system” was deleted and replaced by “primary containment” and “secondary containment.” Hendricks voiced his concern that “mine influenced water” has a broad definition. The term “seismic operations” was removed from the definition of “oil and gas operation.” “Other critical communities” definition was changed to information specifically mentioned on the PNDI receipt. Perry explained that PNDI would be changing its receipt information in response to a large number of comments and a statutory obligation of the Department. Hendricks asked if the definition of “public resource agency” should include water purveyor and he wanted clarification on the definition. Perry explained that a water purveyor provides a public drinking water supply, and so is appropriate to be included in the public resource impact screening. The definition of “secondary containment” changed from “... to prevent comingling of released regulated substances ” to “... to minimize comingling of incompatible released regulated substances...” The definition “wellhead protection area” relates to drinking water regulations and is a known area by the Department; DEP will investigate how to make this information available to operators while maintaining security for water supplies. Hendricks asked if there was any internal talk about including zone 1 and 2, without zone 3. Klapkowski stated he will talk to the water supply program.

Protections relating to antidegradation requirements in high quality or exceptional value areas are added to subsections 78a.15(b.1) and (h). Klapkowski explained that section 78a.15(f)(2) is related to the collaboration between the public resource and the operator. Subsection (g) is necessary only if that collaboration cannot be achieved.

Under section 78a.17, the well permit is valid for 12 months if drilling has commenced. If drilling has commenced, then drilling with due diligence requires completion of drilling within 16 months. A permit extension for good cause is available. If drilling has not commenced within the first 12 months, a single renewal for 2-years may be applied for.

Hendricks proposed taking out “wellsite construction, well drilling, altering, or other oil and gas operations” to just “oil and gas operations” in subsections 78a.51(b) and 78a.51(c). The following section would be made clearer if it was noted in the beginning, instead of at the end, of the entry it was regarding water for human consumption 78a.51(d). Klapkowski stated that the Department would consider making those changes.

PUBLIC COMMENT ON DRAFT FINAL RULEMAKING, CHAPTER 78a

Krafjack asked if there was anything that was in the draft final rulemaking of the centralized tank storage section that is not included in the waste regulations. The Department responded that there was not, the waste regulations are broader.

Thomas Au – Sierra Club – a letter was sent to all members of TAB and to the Department. They support many provisions of the draft final rulemaking. Critical items for improvements include greater setbacks from public resources, additional safeguards for spills and releases, and

noise control measures. The Sierra Club supports moving the current changes to the regulations forward.

Eva Roban – Clean Air Council – signed onto Sierra Club letter. They asked that school setbacks be increased from 200 feet to one mile and that all parents of children in the school have an opportunity to comment on the well permit. Noise mitigation for unconventional wells was removed and the Council strongly urged the Department to continue engagement on this topic. Air pollutants are released in gas drilling, and the Council urged the strongest regulation possible to limit these emissions.

SUMMARY OF DRAFT FINAL RULEMAKING AMENDING CHAPTER 78a

Discussion of the draft final rulemaking amending Chapter 78a continued after public comment and lunch. Hendricks suggested that the water supply quality subsection achieve or meet is sticking to a one sample; the word “comparable” as used in Act 13 should be included. Perry agreed to change “...or, achieves the quality...” to “...or is comparable to the quality...” and the change was made at this time.

Subsection 78a.52(d) allows for submission of the predrill survey 10 business days prior to the commencement of drilling since the API number may be assigned a significant time before drilling. Hendricks and Baldassare brought up issue of water sample collection varying and not always being performed by someone following proper protocols. Not all laboratories may be accredited for sampling. Perry addressed the need for laboratory accreditation program and a need for protocol.

Pelepko discussed the area of review section, 78a.52a. Plugged and abandoned wells were added to those requiring identification due to the quality of plugs varying, especially with age. McConnell asked if forms are being created. Pelepko stated the work group will begin in October and then will be available for public review and advisory review. Yoxtheimer stated that PennPilot (<http://www.pennpilot.psu.edu/>) web site would be useful as a recommended resource. Pelepko would like opinions on monitoring plugged and abandoned sites and the risk-based approach to monitoring. Monitoring schedule would be different depending on the situation.

For wells in the area of review, the 1500’ benchmark is tied to monitoring. Wells that penetrate within 1500’ vertically must be monitored during fracking. An issue was raised as to whether that distance should be in reference to the formation tops, bottoms, or the perforation elevation. Subsection (e) now provides a mechanism for agency to have the ability to address operators who submit substandard surveys or monitoring plans.

Changes to clarify the 100% rule for waste generated or used at the well site change were presented. Hendricks asked for clarity on the Temporary Storage section regarding modular aboveground storage structures. The first time a modular structure is used it would need engineering approval, use beyond that would require notification to the Department about the location of the structure.

The Department is asking operators to register underground storage tanks prior to installation. Deficiencies with tanks identified during the once per calendar month walk through inspection for unconventional operators will need to be remedied.

Radiation protection program suggested requiring a radioactivity preparedness plan be in place for each site in accordance with the “Guidance Document on Radioactivity Monitoring at Solid Waste processing and disposal facilities.” Klapkowski suggested each company would likely be able to develop a generic form that can be individualized for each location.

TAB suggested changing the restoration of freshwater impoundments to 9 months from “...completion of hydraulic fracturing...” rather than...“...completion of drilling...” Perry stated he thinks the Department can make that change. Perry suggested adding an option to grant an extension for restoration of land surface area disturbed and that the topics will be discussed in the upcoming webinar.

Remedial action completion report being due within 45-days after the remedial plan is fully implemented was discussed. Hendricks suggested the Department add to the previous section 78.66(c)(2)(v) a remedial action plan including a schedule for progress report and remedial action completion report. Perry noted this was a helpful suggestion and the change would be made.

TAB requested a best management practices citation to prevent transfer of harmful or nuisance species under the water management plan section.

Saunders stated he had concerns that bringing well development pipelines above ground will cause many problems. The Department notes that this is well development pipelines only and not for all pipelines and that there are exceptions such as for transportation routes and waterways. Using above ground pipes is a safety issue. Many leases state that pipelines need to be underground, however in that situation the operator would have to avoid using temporary pipelines. Perry states that the Department received many comments with same concerns as TAB and has fully considered all comments and made the changes that the Department believes are appropriate.

PUBLIC COMMENT ON DRAFT FINAL RULEMAKING, CHAPTER 78a

Tom Yarnick - XTO Energy - expressed concern with forms not following through with the new terminology. Adams explained that this is being addressed through updating of forms. Another concern is the use of the term “piping” in the definition of primary containment could encompass an extraordinary amount of piping, some unrelated to primary containment. His third comment was to add “used or” to the last sentence in section 78a.58a(a); “unless the wastes or substances are generated at or will be beneficially **used or** reused at that well site.”

SUMMARY OF DRAFT FINAL RULEMAKING AMENDING CHAPTER 78a **(CONTINUED)**

The Radioactive logging sources section has a cross-section reference update and a small

addition to the information required to be reported.

Hendricks questioned the necessity of monthly waste reporting. Perry stated there is a fairly significant difference between what the operators report that they send to the facilities and what the facilities report they have received. To remedy the situation the Department will require reports that are more frequent. It seems that the required well-by-well reporting is not occurring. It is important for DEP to monitor and understand the produced water future in Pennsylvania looks like. This topic would need additional discussion; there may be a need for a workgroup. The chairs of TAB and COGAC will discuss who would be best suited for this workgroup.

SUMMARY OF DRAFT FINAL RULEMAKING AMENDING CHAPTER 78

The difference between Chapters 78 and 78a were outlined. Subsection 78.15(h) is a parallel provision for antidegradation; it is similar to 78a. In subsection 78.57(h), unconventional wells require a routine inspection to occur once a month while conventional wells require this once a quarter to match the integrity assessment program. Many of the unconventional sections were deleted from the conventional Chapter.

Perry asked if there were any sections that anyone wanted to discuss from Chapter 78. He also stated there would be a webinar scheduled prior to the October meeting for further discussion of some of the more complex issues. Four topics were requested to be discussed by TAB:

- (1) Wellhead protection area – human consumption vs non-human consumption
- (2) Area of review – notification of operators of plugged wells
- (3) Restoration timing of wells not drilled
- (4) Timing of waste reporting

NEW BUSINESS:

No new business discussed.

ADJOURNMENT:

Motion: to adjourn; by Baldassare, seconded by Hendricks, with voting members unanimously approving. Motion carried.

Adjournment: The meeting was adjourned at 3:50 PM.